

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  SERVISENSE.COM, INC.	DOCKET NO. FCU-02-17
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**ORDER GIVING NOTICE OF POSSIBLE REVOCATION OF CERTIFICATE**

(Issued September 16, 2002)

On August 12, 2002, Utilities Board (Board) staff learned that a company using the name "The Iowa-Nebraska Telephone Company" (Iowa-Nebraska) was advertising local exchange services in Iowa without a certificate of public convenience and necessity, as required by Iowa Code § 476.29 (2001), or registering with the Board, as required by 199 IAC 22.23(3) (2002). Board staff contacted a series of representatives of Iowa-Nebraska and related entities, including Eastern Telephone, Inc. (Eastern), and ServiSense.com, Inc. (ServiSense). ServiSense is an authorized provider of local exchange telecommunications services in Iowa, holding a certificate of public convenience and necessity issued pursuant to § 476.29.

Based on information received by staff, the Board stated that it appears ServiSense is no longer offering telecommunications services in Iowa in any meaningful sense; instead, the service is being advertised under the name of Iowa-Nebraska and is allegedly being offered pursuant to ServiSense's certificate, which Eastern appears to believe it has purchased, but which has never been transferred by the Board. If correct, Iowa-Nebraska was offering land-line local telephone

service in Iowa without first obtaining a certificate of public convenience and necessity from the Board, as required by § 476.29; it was offering service without having a valid tariff on file with the Board, as required by § 476.4; it was serving the former customers of ServiSense without having obtained each customer's authorization to change the service, as required by § 476.103(3) and the Board's rules at 199 IAC 22.23; and it lacked an up-to-date registration form, as required by 199 IAC 22.23(3). Accordingly, on August 27, 2002, the Board issued an order to show cause stating that if the Board were to find that Iowa-Nebraska, ServiSense, or Eastern is violating one or more of these requirements, or has committed other statutory or regulatory violations that are not yet apparent, then the Board would take appropriate action to have the violations stopped.

The Board opened this formal complaint docket pursuant to § 476.3(1) to investigate the actions of ServiSense, Iowa-Nebraska, and Eastern. Those companies were given an opportunity to show cause why the Board should not find them in violation of one or more of the statutory provisions cited above or such other provisions of chapter 476 and the Board's rules as may develop through the course of this proceeding. They were also given an opportunity to show why the Board should not take appropriate action if such violations are found, including revocation of ServiSense's certificate of public convenience and necessity, rejection of its tariff, prohibition of other service providers from billing on behalf of the violators or providing exchange access services to them, seeking an injunction or other appropriate relief in district court, or taking such other action as may be appropriate.

Further, the Board ordered that ServiSense, Iowa-Nebraska, and Eastern may not bill any Iowa customers for any services currently being provided by any or all of them in violation of Iowa law and that such arrangements must continue until further order of the Board. In this way, the companies will not be "furnishing communications services to the public for compensation" and therefore will not be "public utilities" as defined in § 476.1, meaning there will be no violations while this docket is pending. The companies were directed to file with the Board complete lists of their Iowa customers in order to allow for notification of the customers that they are not required to pay for any services being provided in violation of Iowa law.

On September 6, 2002, Eastern and ServiSense filed a response to the order to show cause, stating the following: ServiSense was issued a certificate of public convenience and necessity on September 21, 2000. On August 20, 2001, ServiSense filed a petition under Chapter 11 of the Bankruptcy Code in the U. S. Bankruptcy Court, District of Massachusetts, and on February 11, 2002, as a part of that proceeding, Eastern purchased substantially all the assets of ServiSense.

Eastern and ServiSense further state that the Bankruptcy Court, recognizing that a certificate of public convenience and necessity and customer accounts cannot be simply purchased and transferred, entered an order approving the continued operation of ServiSense under the management of Eastern until Eastern obtained its own authorizations and gave the appropriate notifications and options to customers. However, Eastern and ServiSense did not provide any copies of the referenced Bankruptcy Court order or any other documentation supporting their statements.

Eastern and ServiSense further state that on June 20, 2002, Eastern entered into a Marketing and Operating Agreement with On Systems Technology, LLP (On Systems). As a part of that agreement (which was not included with the response), Eastern authorized On Systems or its nominee (in this case, Iowa-Nebraska) to acquire customers under the reseller ID account of On Systems and pursuant to ServiSense's certificate. The customers were to remain on the ServiSense system until such time as Iowa-Nebraska received appropriate authority, when the customers would be transferred. The agreement specifically required that On Systems and its nominees be in compliance with all appropriate regulatory requirements.

Upon receipt of a letter from Board staff on August 23, 2002 (attached to the order to show cause as Attachment A), Eastern and ServiSense state they learned "substantial disturbing information about which [they were] previously completely unaware." In response to the staff letter, on August 26, 2002, Eastern and ServiSense sent a letter to On Systems informing On Systems of the staff letter and instructing On Systems to refrain from any and all marketing to and or provisioning of any more customers "under our reseller code, pending final and satisfactory disposition of these matters by the various regulatory agencies." A copy of the letter was attached to the response. Eastern and ServiSense represent that the "letter, together with follow up discussions, has effectively terminated all marketing to and provision of customers in the State of Iowa before any [On Systems] customers were provisioned." (Emphasis in original.)

Eastern and ServiSense assert that as a result of these actions, any potential harm to Iowa residents from the circumstances that are the subject of this investigation has been removed. They state that ServiSense currently has only one customer in Iowa; that Iowa-Nebraska is, to the best of their knowledge, no longer advertising or marketing in Iowa (or anywhere), and that Iowa-Nebraska has no authority to provision a customer through ServiSense. Eastern and ServiSense conclude that all of the Board's concerns about Eastern or ServiSense should be alleviated and no further Board action is necessary.

The Board does not agree. The response of Eastern and ServiSense does not address all of the relevant issues, does not provide sufficient information, and is insufficient to satisfy the Board that Eastern, Iowa-Nebraska, and ServiSense are not continuing to violate Iowa law. For example, Eastern and ServiSense represent that they have terminated marketing to and provision of service to customers in the State of Iowa by means of the letter attached to their response and "follow up discussions," but the letter merely suspends marketing and provisioning "pending final and satisfactory disposition of these matters by the various regulatory agencies" and the discussions are not described in any detail. While the letter tends to support the representations of Eastern and ServiSense, it is insufficient by itself to establish that they have, in fact, terminated their relationship with On Systems or Iowa-Nebraska.

Accordingly, with this order the Board is giving notice to ServiSense that its certificate of public convenience and necessity will be revoked, pursuant to Iowa Code § 476.29(9), unless ServiSense (or Eastern, on behalf of ServiSense) files a

request for hearing or sufficient information to establish, without a hearing, that the certificate issued to ServiSense should not be revoked. Such information must be filed no later than September 23, 2002, and should include, at a minimum, the following:

1. The Bankruptcy Court orders relating to the sale of the ServiSense assets to Eastern, establishing Eastern's ownership of ServiSense, and approving continued operation of ServiSense under the management of Eastern, pending regulatory authorization of Eastern.
2. The Marketing and Operating Agreement between Eastern and On Systems.
3. Any letters or other documents officially suspending or terminating the relationship between Eastern and ServiSense, on the one hand, and On Systems and Iowa-Nebraska, on the other.
4. Any other documents necessary to support the statements made by Eastern and ServiSense in their response of September 6, 2002.

In the absence of these documents or a request for hearing, the Board will revoke the certificate of public convenience and necessity issued to ServiSense and direct all certificated local exchange service providers in Iowa to cease providing facilities to and exchanging local communications traffic with ServiSense.

**IT IS THEREFORE ORDERED:**

Pursuant to Iowa Code § 476.29(9), ServiSense.com, Inc., is notified that the certificate of public convenience and necessity issued to ServiSense on September 21, 2000, and identified as Certificate No. 0223, will be revoked unless, on or before September 23, 2002, ServiSense (or another entity on behalf of ServiSense) files a request for hearing alleging material issues of fact or law or sufficient information to demonstrate, without need of a hearing, that the ServiSense certificate should not be revoked.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 16<sup>th</sup> day of September, 2002.